

AN ACT

relating to the administrative penalty, amelioration, and informal dispute resolution processes for providers participating in certain Medicaid waiver programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 161.088, Human Resources Code, as added by Chapters 826 (H.B. 4001) and 1200 (S.B. 1385), Acts of the 84th Legislature, Regular Session, 2015, is redesignated as Section 161.089, Human Resources Code, and amended to read as follows:

Sec. 161.089 [~~161.088~~]. ADMINISTRATIVE PENALTIES. (a) This section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the commission [~~department~~] to serve persons with an intellectual or developmental disability:

(1) the home and community-based services (HCS) waiver program; and

(2) the Texas home living (TxHmL) waiver program.

(b) The commission [~~department~~] may assess and collect an administrative penalty against a provider who participates in a program to which this section applies for a violation of a law or rule relating to the program. If the commission [~~department~~] assesses an administrative penalty against a provider for a violation of a law or rule, the commission [~~department~~] may not impose a payment hold against or otherwise withhold contract

1 payments from the provider for the same violation of a law or rule.

2 (c) After consulting with appropriate stakeholders, the  
3 executive commissioner shall develop and adopt rules regarding the  
4 imposition of administrative penalties under this section. The  
5 rules must:

6 (1) specify the types of violations that warrant  
7 imposition of an administrative penalty;

8 (2) establish a schedule of progressive  
9 administrative penalties in accordance with the relative type,  
10 frequency, and seriousness of a violation;

11 (3) prescribe reasonable amounts to be imposed for  
12 each violation giving rise to an administrative penalty, subject to  
13 Subdivision (4);

14 (4) authorize the imposition of an administrative  
15 penalty in an amount not to exceed \$5,000 for each violation;

16 (5) provide that a provider commits a separate  
17 violation each day the provider continues to violate the law or  
18 rule;

19 (6) ensure standard and consistent application of  
20 administrative penalties throughout the state; and

21 (7) provide for an administrative appeals process to  
22 adjudicate claims and appeals relating to the imposition of an  
23 administrative penalty under this section that is in accordance  
24 with Chapter 2001, Government Code.

25 (d) ~~[In specifying the types of violations that warrant~~  
26 ~~imposition of an administrative penalty under Subsection (c), the~~  
27 ~~executive commissioner shall specify the types of minor violations~~

1 ~~that allow a provider an opportunity to take corrective action~~  
2 ~~before a penalty is imposed.~~

3 ~~[(e)]~~ In determining the types of violations that warrant  
4 imposition of an administrative penalty and in establishing the  
5 schedule of progressive administrative penalties and penalty  
6 amounts under Subsection (c), the executive commissioner must  
7 consider:

8 (1) the seriousness of a violation, including:

9 (A) the nature, circumstances, extent, and  
10 gravity of the violation; and

11 (B) the hazard to the health or safety of  
12 recipients resulting from the violation;

13 (2) the provider's history of previous violations;

14 (3) whether the provider:

15 (A) had prior knowledge of the violation,  
16 including whether the provider identified the violation through the  
17 provider's internal quality assurance process; and

18 (B) made any efforts to mitigate or correct the  
19 identified violation;

20 (4) the penalty amount necessary to deter future  
21 violations; and

22 (5) any other matter justice may require.

23 (e) Except as provided by Subsection (f), the executive  
24 commissioner by rule ~~[(f) In lieu of imposing an administrative~~  
25 ~~penalty under this section, the department]~~ shall provide to  
26 [allow] a provider who has implemented a plan of correction ~~[found~~  
27 ~~to have committed a minor violation specified by rule in accordance~~

1 ~~with Subsection (d) to have]~~ a reasonable period of time following  
2 ~~[that is not less than 45 days after]~~ the date the commission  
3 ~~[department]~~ sends notice to the provider of the violation to  
4 correct ~~[take corrective action regarding]~~ the violation before the  
5 commission may assess an administrative penalty. The period may  
6 not be less than 45 days ~~[department may not allow time for~~  
7 ~~corrective action for any violation that is not a minor violation].~~

8 (f) The commission may assess an administrative penalty  
9 without providing a reasonable period of time to a provider to  
10 correct the violation if the violation:

11 (1) represents a pattern of violation that results in  
12 actual harm;

13 (2) is widespread in scope and results in actual harm;

14 (3) is widespread in scope and constitutes a potential  
15 for actual harm;

16 (4) constitutes an immediate threat to the health or  
17 safety of a recipient;

18 (5) substantially limits the provider's ability to  
19 provide care; or

20 (6) is a violation in which a provider:

21 (A) wilfully interferes with the work of a  
22 representative of the commission or the enforcement of a law  
23 relating to a program to which this section applies;

24 (B) fails to pay a penalty assessed by the  
25 commission under this section not later than the 10th day after the  
26 date the assessment of the penalty becomes final, subject to  
27 Section 161.0891; or

1           (C) fails to submit a plan of correction not  
2 later than the 10th day after the date the provider receives a  
3 statement of the violation.

4           (g) Notwithstanding any other provision of this section, an  
5 administrative penalty ceases to be incurred on the date a  
6 violation is corrected.

7           (h) In this section:

8           (1) "Actual harm" means a negative outcome that  
9 compromises a recipient's physical, mental, or emotional  
10 well-being.

11           (2) "Immediate threat to the health or safety of a  
12 recipient" means a situation that causes, or is likely to cause,  
13 serious injury, harm, or impairment to or the death of a recipient.

14           (3) "Pattern of violation" means repeated, but not  
15 pervasive, failures of a provider to comply with a law relating to a  
16 program to which this section applies that:

17                   (A) result in a violation; and

18                   (B) are found throughout the services provided by  
19 the provider or that affect or involve the same recipients or  
20 provider employees or volunteers.

21           (4) "Recipient" means a person served by a program to  
22 which this section applies.

23           (5) "Widespread in scope" means a violation of a law  
24 relating to a program to which this section applies that:

25                   (A) is pervasive throughout the services  
26 provided by the provider; or

27                   (B) represents a systemic failure by the provider

1 that affects or has the potential to affect a large portion of or  
2 all of the recipients.

3 SECTION 2. Subchapter D, Chapter 161, Human Resources Code,  
4 is amended by adding Sections 161.0891 and 161.0892 to read as  
5 follows:

6 Sec. 161.0891. AMELIORATION PROCESS. (a) In lieu of  
7 demanding payment of an administrative penalty assessed under  
8 Section 161.089, the commission may, in accordance with this  
9 section, allow the provider subject to the penalty to use, under the  
10 supervision of the commission, any portion of the amount of the  
11 penalty to ameliorate the violation or to improve services in the  
12 waiver program in which the provider participates.

13 (b) The commission shall offer amelioration to a provider  
14 under this section not later than the 10th day after the date the  
15 provider receives from the commission a final notification of the  
16 assessment of an administrative penalty that is sent to the  
17 provider after an informal dispute resolution process but before an  
18 administrative hearing.

19 (c) A provider to whom amelioration has been offered must  
20 file a plan for amelioration not later than the 45th day after the  
21 date the provider receives the offer of amelioration from the  
22 commission. In submitting the plan, the provider must agree to  
23 waive the provider's right to an administrative hearing if the  
24 commission approves the plan.

25 (d) At a minimum, a plan for amelioration must:

26 (1) propose changes to the management or operation of  
27 the waiver program in which the provider participates that will

1 improve services to or quality of care for recipients under the  
2 program;

3 (2) identify, through measurable outcomes, the ways in  
4 which and the extent to which the proposed changes will improve  
5 services to or quality of care for recipients under the waiver  
6 program;

7 (3) establish clear goals to be achieved through the  
8 proposed changes;

9 (4) establish a timeline for implementing the proposed  
10 changes; and

11 (5) identify specific actions necessary to implement  
12 the proposed changes.

13 (e) The commission may require that an amelioration plan  
14 propose changes that would result in conditions that exceed the  
15 requirements of a law or rule relating to the waiver program in  
16 which the provider participates.

17 (f) The commission shall approve or deny an amelioration  
18 plan not later than the 45th day after the date the commission  
19 receives the plan. On approval of a provider's plan, the commission  
20 or the State Office of Administrative Hearings, as appropriate,  
21 shall deny a pending request for a hearing submitted by the  
22 provider.

23 (g) The commission may not offer amelioration to a provider:

24 (1) more than three times in a two-year period;

25 (2) more than one time in a two-year period for the  
26 same or similar violation; or

27 (3) for a violation that resulted in hazard to the

1 health or safety of a recipient, including serious harm or death, or  
2 that substantially limits the provider's ability to provide care.

3 (h) This section expires September 1, 2023.

4 Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (a) The  
5 executive commissioner by rule shall establish an informal dispute  
6 resolution process in accordance with this section. The process  
7 must provide for adjudication by an appropriate disinterested  
8 person of disputes relating to a proposed enforcement action or  
9 related proceeding of the commission against a provider  
10 participating in a waiver program described by Section 161.089.  
11 The informal dispute resolution process must require:

12 (1) a provider participating in a waiver program  
13 described by Section 161.089 to request informal dispute resolution  
14 not later than the 10th calendar day after the date of notification  
15 by the commission of the violation of a law or rule relating to the  
16 program; and

17 (2) the commission to complete the process not later  
18 than the 30th calendar day after the date of receipt of a request  
19 from a provider for informal dispute resolution.

20 (b) As part of the informal dispute resolution process  
21 established under this section, the commission shall contract with  
22 an appropriate disinterested person to adjudicate disputes between  
23 a provider participating in a waiver program described by Section  
24 161.089 and the commission concerning a statement of violations  
25 prepared by the commission. Section 2009.053, Government Code,  
26 does not apply to the selection of an appropriate disinterested  
27 person under this subsection. The person with whom the commission

1 contracts shall adjudicate all disputes described by this  
2 subsection.

3 (c) The executive commissioner shall adopt rules to  
4 adjudicate claims in contested cases.

5 (d) The commission may not delegate its responsibility to  
6 administer the informal dispute resolution process established by  
7 this section to another state agency.

8 SECTION 3. As soon as practicable after the effective date  
9 of this Act, the executive commissioner of the Health and Human  
10 Services Commission shall adopt the rules necessary to implement  
11 the changes in law made by this Act.

12 SECTION 4. This Act takes effect September 1, 2017.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2590 was passed by the House on April 27, 2017, by the following vote: Yeas 144, Nays 0, 3 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2590 on May 26, 2017, by the following vote: Yeas 144, Nays 1, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2590 was passed by the Senate, with amendments, on May 24, 2017, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor